

Bennett, Giuliano, McDonnell & Perrone, LLP

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January 4, 2008
Via Mail & ECF

Clerk of the Court
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007
Att: Mr. Dave Thomas
Orders & Judgments

Re: Merchant Cash & Capital, LLC et al.
07 CV 10345
Our File: D735

Dear Sir:

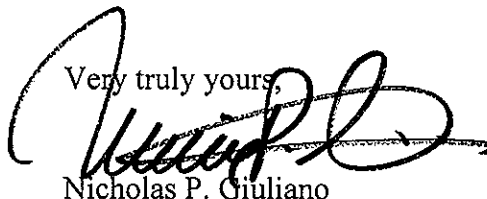
I represent the plaintiff in the above action and I am writing to obtain certificates of default against two defendants, Fried Okra and Thoroughbreds Restaurant LP.

This case is assigned to Judge Scheindlin. Her individual rules relating to default judgments (copy enclosed) require, among other things, original certificates of default. Her rules direct the moving party to submit a request for entry of default and proposed certificates to the Clerk.

Enclosed please find my request for entry of default and proposed certificates of default for the defaulting defendants.

Please sign the certificates and return them to me in the stamped, self-addressed envelope provided herewith.

Very truly yours,



Nicholas P. Giuliano

/bm
Encl.

Joint Pretrial Order is filed, the Court must be notified by letter immediately.

2. Procedure During Trial

Counsel proceeding to trial should obtain a copy of Judge Scheindlin's rules on the Conduct of Counsel at Trial, which can be obtained in the courtroom. Counsel should also exchange any demonstrative evidence before trial.

F. Related Cases

After an action has been accepted as related to a prior filing, all future court papers and correspondence must contain the docket number of the new filing, as well as the docket number of the case to which it is related (e.g., 00 Civ. 1234 [rel. 99 Civ. 4321]).

G. Default Judgments

Applications for default judgments will not be accepted unless they include the following:

- (1) A description of the nature of the claim;
- (2) An affidavit representing that this Court has subject matter jurisdiction over the action;
- (3) An affidavit representing that this Court has personal jurisdiction over the defendant;
- (4) An affidavit representing that the defendant is not an infant or an incompetent;
- (5) An original certificate of default (*see below for instructions*) stating that the defendant was properly served and failed to answer/appear, signed and stamped by the Clerk of the Court. (If the defendant did appear in the action, the plaintiff must submit an affidavit representing that the defendant has notice of the application for default);
- (6) Reasonable attorney's fees incurred in the preparation of the default judgment application, usually not to exceed \$2,000, if attorney's fees are sought; and
- (7) All required substantiating documentation. (Generally, a copy of the complaint satisfies (1), (2), and (3).)

If the plaintiff seeks an award of damages in the motion for default judgment, the plaintiff must also include:

- (8) A request for an amount equal to or less than the principal amount demanded in the complaint;
- (9) Definitive information and documentation such that the amount provided for in the proposed judgment can be calculated. (If this requirement cannot be satisfied, a default judgment may be granted as to liability, and damages will be determined by an inquest);
- (10) An affidavit representing that no part of the judgment sought has been paid, other than as indicated in the motion;
- (11) A request for interest on the principal amount not to exceed 9%, if interest is sought;
- (12) The calculations made in arriving at the proposed judgment amount.

H. Certificate of Default

To file for a certificate of default, parties must submit to the Clerk of the Court a "request for entry of default" and a proposed "clerk's certificate." Parties must submit this electronically through the ECF system

but must also send a courtesy copy of the certificate only, by hand or mail (along with a self addressed stamped envelope) to the Orders and Judgments Clerk for signature and seal. This signed certificate is to be attached to the default judgment when the default judgment is submitted to this Court.

A sample default judgment and clerk's certificate of default is available under *Forms* on the Southern District of New York's website: <http://www.nysd.uscourts.gov/forms.htm#Judgments>

Bennett, Giuliano, McDonnell & Perrone, LLP
Attorneys for Plaintiff
494 Eighth Avenue, 7th Floor
New York, New York 10001
Telephone: (646) 328-0120
Nicholas P. Giuliano (NG 1060)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MERCHANT CASH & CAPITAL LLC,

07 CV 10345

Plaintiff,

- against-

FRIED OKRA, INC., d/b/a THOROUGHBREDS
RESTAURANT, THOROUGHBREDS
RESTAURANT LP, and TONY BENNETT,

**AFFIDAVIT FOR
ISSUANCE OF CLERK'S
CERTIFICATE PURSUANT
TO FRCP 55(a)**

Defendants.

-----X

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

Nicholas P. Giuliano, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and a member of the firm of Bennett, Giuliano, McDonnell & Perrone, LLP, attorneys for plaintiff in the above-entitled action, and I am familiar with all the facts and circumstances in this action.

2. I make this affidavit pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Rules 55.1 and 55.2(a) of the Civil Rules for the Southern District of New York, in support of plaintiff's application for a certificate of default against defendants Fried Okra, Inc., d/b/a Thoroughbreds Restaurant ("Fried Okra"), and Thoroughbreds Restaurant, LP ("Thoroughbreds Restaurant").

3. The defendants are business entities and, therefore, are not infants, in the military, or incompetent persons.

4. The defendants have not answered the complaint.

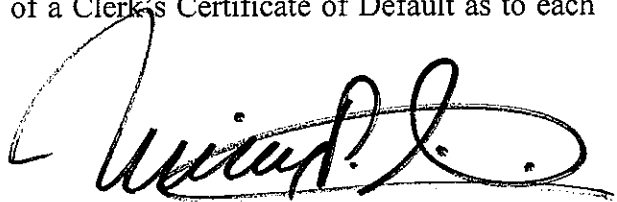
5. This action was commenced on November 15, 2007, by the filing of the summons and complaint.

6. A copy of the summons and complaint was served on the defendant Fried Okra on December 6, 2007, by personal service of true copies of same on Robert Moran, registered agent for Fried Okra, at 70 D'Gullah Way, Pawleys Island, SC 29585, and proof of service by the process server was filed on January 3, 2008. Defendant Fried Okra has not answered the complaint and the time for the defendant to answer the complaint has expired.

7. A copy of the summons and complaint was served on the defendant on December 11, 2007, by personal service of true copies of same on Thomas Waxenfeller at Thoroughbreds Restaurant, 9706 Kings Highway Myrtle Beach, SC 29572, and proof of service by the process server was filed on January 3, 2008. Defendant Thoroughbreds Restaurant has not answered the complaint and the time for the defendant to answer the complaint has expired.

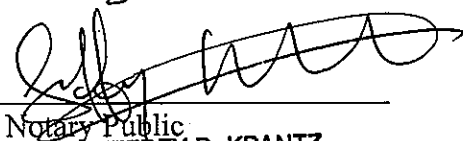
8. A Clerk's Certificate for each defendant is attached hereto.

WHEREFORE, plaintiff requests the entry of a Clerk's Certificate of Default as to each defendant named above in paragraphs 6 and 7.



Nicholas P. Giuliano

Sworn to before me this 4th
day of January, 2008.



Notary Public

JEFFREY R. KRANTZ

Z:\Documents\A\B\10345-SAS\Public\Notary\Notary Public - State of New York.doc

Notary Public

No. 02KR6128569

Qualified in New York County

Commission Expires June 13, 2009

Bennett, Giuliano, McDonnell & Perrone, LLP
Attorneys for Plaintiff
494 Eighth Avenue, 7th Floor
New York, New York 10001
Telephone: (646) 328-0120
Nicholas P. Giuliano (NG 1060)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MERCHANT CASH & CAPITAL LLC,

Plaintiff,

- against-

FRIED OKRA, INC., d/b/a THOROUGHBREDS
RESTAURANT, THOROUGHBREDS
RESTAURANT LP, and TONY BENNETT,

Defendants.
-----X

07 CV 10345
(SAR) (AJP)

CLERK'S CERTIFICATE
OF DEFAULT

I, J. MICHAEL MCMAHON, Clerk of the United States District Court for the Southern District of New York, do hereby certify that this action commenced on **November 15, 2007**, with the filing of a summons and complaint, a copy of the summons and complaint was served on defendant **Fried Okra, Inc., d/b/a Thoroughbreds Restaurant**, on **December 6, 2007**, by serving **Robert Moran, Jr., a registered agent for service of process on said defendant, personally**, and proof of such service thereof was filed on **January 4, 2008**.

I further certify that the docket entries indicate that the defendant has not filed an answer or otherwise moved with respect to the complaint herein. The default of defendant **Fried Okra, Inc., d/b/a Thoroughbreds Restaurant**, is hereby noted.

Dated: New York, New York
_____, 2008

J. MICHAEL MCMAHON
Clerk of the Court

By: _____
Deputy Clerk

Bennett, Giuliano, McDonnell & Perrone, LLP
Attorneys for Plaintiff
494 Eighth Avenue, 7th Floor
New York, New York 10001
Telephone: (646) 328-0120
Nicholas P. Giuliano (NG 1060)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Plaintiff,

- against-

FRIED OKRA, INC., d/b/a THOROUGHBREDS
RESTAURANT, THOROUGHBREDS
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Dated: New York, New York
_____, 2008

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Clerk of the Court

By: _____
Deputy Clerk

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Telephone: (646) 328-0120
Nicholas P. Giuliano (NG 1060)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MERCHANT CASH & CAPITAL LLC,

Plaintiff,

- against-

FRIED OKRA, INC., d/b/a THOROUGHBREDS
RESTAURANT, THOROUGHBREDS
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By: _____
Deputy Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MERCHANT CASH & CAPITAL LLC,

Plaintiff,

- against-

FRIED OKRA, INC., d/b/a THOROUGHBREDS
RESTAURANT, THOROUGHBREDS
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Clerk of the Court

By: _____
Deputy Clerk